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SENATE BILL NO. 40

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on _____
on _____)

(Patron Prior to Substitute--Senator Spruill)

A BILL to amend and reenact § 63.2-1805 of the Code of Virginia, relating to assisted living facilities;
involuntary discharge.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1805 of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1805. Admissions and discharge; mandatory minimum liability insurance.

A. The Board shall adopt regulations:

1. Governing admissions to assisted living facilities;

2. Requiring that each assisted living facility prepare and provide a statement, in a format prescribed by the Department, to any prospective resident and his legal representative, if any, prior to admission and upon request, that discloses information, fully and accurately in plain language, about the (i) services; (ii) fees, including clear information about what services are included in the base fee and any fees for additional services; (iii) admission, transfer, and discharge criteria, including criteria for transfer to another level of care within the same facility or complex; (iv) general number and qualifications of staff on each shift; (v) range, frequency, and number of activities provided for residents; and (vi) ownership structure of the facility;

3. Establishing a process to ensure that each resident admitted or retained in an assisted living facility receives appropriate services and periodic independent reassessments and reassessments when there is a significant change in the resident's condition in order to determine whether a resident's needs can continue to be met by the facility and whether continued placement in the facility is in the best interests of the resident;

26 4. Governing appropriate discharge planning for residents whose care needs can no longer be met
27 by the facility;

28 5. Addressing the involuntary discharge of residents. Such regulations shall provide that residents
29 may be involuntarily discharged only (i) in accordance with Board regulations, provided that the assisted
30 living facility has met the requirements of subsection B, as applicable, and the assisted living facility has
31 made reasonable efforts to meet the needs of the resident; (ii) for nonpayment of contracted charges,
32 provided that the resident has been given at least 30 days to cure the delinquency after notice was provided
33 to the resident and the resident's legal representative or designated contact person of such nonpayment;
34 (iii) for the resident's failure to substantially comply with the terms and conditions, as allowed by
35 regulation, of the resident agreement between the resident and assisted living facility; (iv) if the assisted
36 living facility closes in accordance with Board regulations; or (v) when the resident develops a condition
37 or care need that is prohibited in Board regulations. Unless an emergency discharge is necessary due to
38 an immediate and serious risk to the health, safety, or welfare of the resident or others, the assisted living
39 facility shall, prior to involuntarily discharging a resident, make reasonable efforts, as appropriate, to
40 resolve any issues with the resident upon which the decision to discharge is based and document such
41 efforts in the resident's file.

42 In addition to providing the written discharge notice to the resident and the resident's legal
43 representative or designated contact person, the assisted living facility shall provide a copy of the notice
44 to the Department and the State Long-Term Care Ombudsman at least 30 days prior to an involuntary
45 discharge unless an emergency discharge is necessary due to an immediate and serious risk to the health,
46 safety, or welfare of the resident or others. Such notice of discharge shall include the reasons for discharge,
47 the date on which the discharge will occur, and information regarding the resident's right to appeal, within
48 the 30-day notice period, the assisted living facility's decision to discharge the resident.

49 In cases of an emergency discharge, such notice shall be provided as soon as possible, but no later
50 than five days after the emergency discharge. Within five days after an emergency discharge, the written
51 discharge notice shall be provided to the resident, the resident's legal representative or designated contact

52 person, the Department, and the State Long-Term Care Ombudsman. A resident may appeal any discharge
53 except discharges pursuant to clause (iv).

54 The Department shall provide the discharge notice form to be used by assisted living facilities to
55 provide notice to a resident of the resident's right to appeal such facility's decision to discharge the resident,
56 which shall also include information regarding the process for initiating an appeal, the number for a toll-
57 free information line, a hearing request form, the facility's obligation to assist the resident in filing an
58 appeal and provide, upon request, a postage prepaid envelope addressed to the Department, and a
59 statement of the resident's right to continue to reside in the facility, free from retaliation, until the appeal
60 has a final Department case decision unless the discharge is an emergency discharge. Where a resident
61 has been removed under an emergency discharge and no longer resides in the facility, the resident retains
62 the right to appeal.

63 Prior to involuntarily discharging a resident, the assisted living facility shall provide relocation
64 assistance to the resident and the resident's legal representative in accordance with Board regulation. The
65 Board shall adopt regulations that establish a process for appeals filed pursuant to this subdivision. Court
66 review of final agency determinations shall be made in accordance with the provisions of the
67 Administrative Process Act (§ 2.2-4000 et seq.);

68 6. Requiring that residents are informed of their rights pursuant to § 63.2-1808 at the time of
69 admission;

70 7. Establishing a process to ensure that any resident temporarily detained in a facility pursuant to
71 §§ 37.2-809 through 37.2-813 is accepted back in the assisted living facility if the resident is not
72 involuntarily admitted pursuant to §§ 37.2-814 through 37.2-819;

73 8. Requiring that each assisted living facility train all employees who are mandated to report adult
74 abuse, neglect, or exploitation pursuant to § 63.2-1606 on such reporting procedures and the consequences
75 for failing to make a required report;

76 9. Requiring that each assisted living facility prepare and provide a statement, in a format
77 prescribed by the Board, to any resident or prospective resident and his legal representative, if any, and
78 upon request, that discloses whether the assisted living facility maintains liability insurance in force to

79 compensate residents or other individuals for injuries and losses from the negligent acts of the facility,
80 provided that no facility shall state that liability insurance is in place unless such insurance provides a
81 minimum amount of coverage as established by the Board;

82 10. Establishing the minimum amount of liability insurance coverage to be maintained by an
83 assisted living facility for purposes of disclosure in accordance with subdivision 9; and

84 11. Requiring that all assisted living facilities disclose to each prospective resident, or his legal
85 representative, in writing in a document provided to the prospective resident or his legal representative
86 and as evidenced by the written acknowledgment of the resident or his legal representative on the same
87 document, whether the facility has an on-site emergency electrical power source for the provision of
88 electricity during an interruption of the normal electric power supply and, if the assisted living facility
89 does have an on-site emergency electrical power source, (i) the items for which such on-site emergency
90 electrical power source will supply power in the event of an interruption of the normal electric power
91 supply and (ii) whether staff of the assisted living facility have been trained to maintain and operate such
92 on-site emergency electrical power source to ensure the provision of electricity during an interruption of
93 the normal electrical power supply. For the purposes of this subdivision, an on-site emergency electrical
94 power supply shall include both permanent emergency electrical power supply sources and portable
95 emergency electrical power sources, provided that such temporary electrical power supply source remains
96 on the premises of the assisted living facility at all times. Written acknowledgement of the disclosure shall
97 be represented by the signature or initials of the resident or his legal representative immediately following
98 the on-site emergency electrical power source disclosure statement.

99 B. If there are observed behaviors or patterns of behavior indicative of mental illness, intellectual
100 disability, substance abuse, or behavioral disorders, as documented in the uniform assessment instrument
101 completed pursuant to § 63.2-1804, the facility administrator or designated staff member shall ensure that
102 an evaluation of the individual is or has been conducted by a qualified professional as defined in
103 regulations. If the evaluation indicates a need for mental health, developmental, substance abuse, or
104 behavioral disorder services, the facility shall provide (i) a notification of the resident's need for such
105 services to the authorized contact person of record when available and (ii) a notification of the resident's

106 need for such services to the community services board or behavioral health authority established pursuant
107 to Title 37.2 that serves the city or county in which the facility is located, or other appropriate licensed
108 provider. The Department shall not take adverse action against a facility that has demonstrated and
109 documented a continual good faith effort to meet the requirements of this subsection.

110 C. The Department shall not order the removal of a resident from an assisted living facility if (i)
111 the resident, the resident's family, the resident's physician, and the facility consent to the resident's
112 continued stay in the assisted living facility and (ii) the facility is capable of providing, obtaining, or
113 arranging for the provision of necessary services for the resident, including, but not limited to, home health
114 care or hospice care.

115 D. Notwithstanding the provisions of subsection C, assisted living facilities shall not admit or
116 retain an individual with any of the following conditions or care needs:

- 117 1. Ventilator dependency.
- 118 2. Dermal ulcers III and IV, except those stage III ulcers that are determined by an independent
119 physician to be healing.
- 120 3. Intravenous therapy or injections directly into the vein except for intermittent intravenous
121 therapy managed by a health care professional licensed in Virginia or as permitted in subsection E.
- 122 4. Airborne infectious disease in a communicable state that requires isolation of the individual or
123 requires special precautions by the caretaker to prevent transmission of the disease, including diseases
124 such as tuberculosis and excluding infections such as the common cold.
- 125 5. Psychotropic medications without appropriate diagnosis and treatment plans.
- 126 6. Nasogastric tubes.
- 127 7. Gastric tubes except when the individual is capable of independently feeding himself and caring
128 for the tube or as permitted in subsection E.
- 129 8. An imminent physical threat or danger to self or others is presented by the individual.
- 130 9. Continuous licensed nursing care (seven-days-a-week, 24-hours-a-day) is required by the
131 individual.
- 132 10. Placement is no longer appropriate as certified by the individual's physician.

